

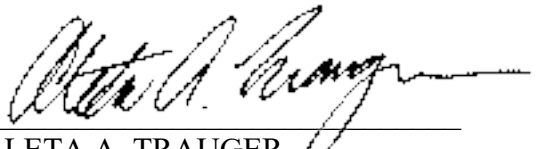


by the project, as represented in the contract documents and change orders. (Doc. No. 59 at 2 (quoting Doc. No. 54 at 14).)

Dr. Householder's testimony, however, is plainly relevant to the question of whether the materials that RMC provided were less than what was "actually, reasonably" needed. If the jury credits Dr. Householder's opinion and concludes that the quantity of materials that RMC provided was sufficient, then the jury could reasonably infer either that some materials were diverted or that DDC was unreasonably wasteful. If materials were diverted or unreasonably wasted, then that would negate DDC's core contention in this case—that its failure to complete the project with the materials that RMC provided is, in and of itself, evidence that RMC did not supply enough. Dr. Householder's evidence is, therefore, highly relevant.

DDC's Motion in Limine No. 1 to Exclude Testimony of Defendant's Proffered Expert Dr. Jerry L. Householder (Doc. No. 59) is **DENIED**.

It is so **ORDERED**.

  
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ALETA A. TRAUGER  
United States District Judge